HAI MAN v. PUBLIC PROSECUTOR.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J. (S'pore) Wilson and Whitton, JJ.) October 24, 1952]

[K. L. — F.M. Criminal Appeal No. 80 of 1952]

Criminal procedure — Summing-up — Misdirection.

In this case the appellant was charged with possession of ammunition, an offence punishable under Regulation 4(1)(b) of the Emergency Regulations, 1951, and sentenced to death. There was enough evidence upon which the appellant could be convicted, but exception was taken to the summing up. The learned trial Judge put the matter to the assessors as follows: ". . . . . consider all evidence before you and if you come to the conclusion that the accused was in possession of these five cartridges, then your verdict should be 'guilty'. If however, you believe the story of the accused, that is that these cartridges were just thrown at him, your verdict should, of course, be 'not guilty' ".

Held that the direction was insufficient. The assessors should have been told that even if they were not convinced of the truth of the story of the appellant, nevertheless, if it left them uncertain of his guilt, he was still entitled to a verdict of "Not guilty".

CRIMINAL APPEAL.

D. G. Rawson for the appellant.

P. G. Clough (D.P.P.) for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:

Sir Charles Murray-Aynsley, C.J., (Singapore): — In this case the appellant was charged with possession of ammunition and sentenced to death. The facts were simple but somewhat peculiar. It was alleged that the appellant asked a Malay, who was at the time Ketua Kampong, to procure him some shot-gun cartridges, saying that the Communists wanted them. According to his version, this Malay then reported the matter to the Police. The rest of the story is certainly a trap. According to the defence it is a "plant". The Malay was provided with cartridges and went with appellant to a spot where it is alleged that the cartridges were handed over, in view of a party of police. According to the Malay, the appellant led him to this spot. It seems clear that this was not true, and that the Malay led the appellant to the place where the Police were waiting. The prosecution alleged that the cartridges were actually handed over. The appellant denied this. Immediately after the appellant was arrested. A statement made to the Police was produced by the prosecution but denied by the appellant.

It is clear that there was evidence upon which the appellant could be convicted, but exception was taken to the summing-up. The learned Judge put the matter to the assessors in this way: ". . . . consider all evidence before you and if you come to the conclusion that the accused was in possession of these five cartridges, then your verdict should be 'guilty'. If, however, you believe the story of the accused, that is that these cartridges were just thrown at him, your verdict should, of course, be 'not guilty' ". We think that that direction was insufficient. The assessors should have been told that even if they were not convinced of the truth of the story of the appellant, nevertheless, if it left them uncertain of his guilt, he was still entitled to a verdict of "Not guilty". In the circumstances we consider that the appeal should be allowed and the conviction quashed.

Appeal allowed.

REX v. CHEAH TEOW PENG.

[App. Crim. Juris. (Spenser Wilkinson, J.) October 1, 1951]

[Penang — Criminal Appeal No. 23 of 1951]

Criminal procedure — Amendment of charge — Duty of Magistrate — Price Control Ordinance 1946.

This was an appeal against the acquittal of the respondent upon a charge under section 9(1)(a) of the Price Control Ordinance. It was contended on appeal that it was the duty of the Magistrate before discharging the accused to consider whether the evidence showed that he committed some offence other than that with which he is charged.

Held that it is for the prosecution to decide what their real complaint against the accused is and to frame their charges or to submit amendments accordingly and it is their obligation to draw the attention of the Magistrate to the possibility of convicting for a different offence.

Semble: The duty of a Magistrate is to hold the scales evenly between the interests of the prosecution on the one hand and the interests of the accused on the other.

Case referred to:—

(1) *Public Prosecutor v. Heng You Nang* (1949) M.L.J. 285 at p. 287.

CRIMINAL APPEAL.

C. M. Sheridan (Federal Counsel) for the Crown.

Respondent in person.

Spenser Wilkinson, J.: — This was an appeal against the acquittal of the respondent upon a charge under section 9(1)(a) of the Price Control Ordinance, 1946.

The Price Control Ordinance, 1946 has been further amended by the Emergency (Price Control) (Amendment) Regulations, 1949. It would appear from the record that the charge against the accused in this case was drawn under the section of the Ordinance which is not in force instead of under the Emergency Regulation which is in force. I do not think, however, that the slight change of wording in fact prejudiced the accused in any way at his trial.